

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION – DETROIT

In re:

City of Detroit, Michigan,

Case No. 13-53846

Chapter 9

Hon. Steven W. Rhodes

Debtor.

**JOINT MOTION OF COMMUNITY FOUNDATION FOR SOUTHEAST MICHIGAN, WILLIAM DAVIDSON FOUNDATION, THE FRED A. AND BARBARA M. ERB FAMILY FOUNDATION, MAX M. AND MARJORIE S. FISHER FOUNDATION, FORD FOUNDATION, HUDSON-WEBBER FOUNDATION, THE KRESGE FOUNDATION, W.K. KELLOGG FOUNDATION, JOHN S. AND JAMES L. KNIGHT FOUNDATION, MCGREGOR FUND, CHARLES STEWART MOTT FOUNDATION AND A. PAUL AND CAROL C. SCHAAP FOUNDATION FOR EXPEDITED HEARING
ON JOINT MOTION TO QUASH SUBPOENAS DUCES TECUM**

Community Foundation for Southeast Michigan, William Davidson Foundation, The Fred A. and Barbara M. Erb Family Foundation, Max M. and Marjorie S. Fisher Foundation, Ford Foundation, Hudson-Webber Foundation, The Kresge Foundation, W.K. Kellogg Foundation, John S. and James L. Knight Foundation, McGregor Fund, Charles Stewart Mott Foundation and A. Paul and Carol C. Schaap Foundation (collectively, the “Foundations”), by and through their attorneys, move this Honorable Court for the entry of an order granting an expedited hearing on their joint motion to quash subpoenas *duces tecum*, as amended (collectively, the “Subpoenas”) issued to each of the Foundations by Syncora Guarantee and Syncora Capital Assurance (collectively, “Syncora”) (Docket Nos. 5224 and 5241) pursuant to L.B.R. 9014-1(h), Bankruptcy Rules 7026 and 9016 and Federal Rules of Civil Procedure 26(5)(c)(1)(A) and 45(d)(3)(A)(iii) and (iv) (the “Motion”), and states:

1. A proposed order granting the relief sought is attached as Exhibit 1.

2. The Foundations are each not for profit charitable foundations, whose only connection to this matter arises from their agreement to provide funding, upon the occurrence of certain conditions precedent, for the benefit of pensioners participating in the General Retirement System and the Police and Fire Retirement System, as set forth in the Debtor's Fourth Amended Plan for the Adjustment of Debts of the City of Detroit (Docket No. 4392) (the "Plan"), which would result in the transfer of the assets of the Detroit Institute of Arts ("DIA") by the Debtor to be held in perpetual charitable trust for the benefit of the citizens of the City of Detroit and the State of Michigan (the "DIA Settlement"). See the Plan at Exhibit I.A.91.

3. On June 4, 2014, Syncora issued the Subpoenas to each of the Foundations, seeking the depositions of the Foundations' representatives under Federal Rule of Civil Procedure 30(b)(6), beginning on June 23, 2014, and continuing through June 27, 2014, to discuss (a) the negotiations between each of the Foundations, the Debtor and any other parties pertaining to the DIA Settlement; (b) the terms of the DIA Settlement; (c) each Foundation's contribution to the DIA Settlement; (d) each Foundation's involvement with the DIA; (e) each Foundation's reasons for entering into the DIA Settlement; (f) the purpose or mission of each Foundation; (g) each Foundation's prior donations or contributions, including donations or contributions to the arts; and, (h) the importance and value of the DIA and its art collection. The Subpoenas were amended by Docket No. 5241, filed on June 5, 2014.

4. The Subpoenas also request that each Foundation produce (a) all documents and communications relating to the DIA Settlement; (b) all documents and communications relating to the negotiations surrounding the DIA Settlement; (c) all documents and communications relating to the transfer of the assets of the DIA pursuant to the DIA Settlement; (d) all documents and communications describing the reasons for entering into the DIA Settlement; (e) documents

sufficient to show the causes or charities each Foundation has previously supported or provided money to from January 1, 1990 to present; (f) each Foundation's mission statement; (g) documents sufficient to show each Foundation's current process for evaluating potential partners or causes; and, (h) all communications between each Foundation and the DIA from January 1, 2001 to the present.¹

5. The Subpoenas would require the disclosure of privileged or other protected matter, are overly broad, and would subject each of the Foundations to harassment, annoyance, embarrassment, oppression and undue burden and expense.

6. Unless the relief is granted on an expedited basis, given the proposed timing of the depositions the Foundations and their representatives will be required to expend significant time and expense searching for the documents requested under the terms of the Subpoenas.

7. Counsel for the Foundations and Syncora have in good faith conferred via telephone on June 10, 2014, in an effort to resolve the matters raised in the Motion without court action.

8. Counsel for Syncora agreed that the depositions required by the Subpoenas and the document production would not proceed on the dates scheduled, and counsel for the Foundations and Syncora agreed to have the Motion heard on June 26, 2014, subject to the agreement of the Court.

For the reasons stated, the Foundations pray that this Honorable Court enter an order scheduling an expedited hearing on their Motion for June 26, 2014.

¹ Docket No. 5241 modified the scope of the document requests to those from March 15, 2013 to June 5, 2014, unless otherwise specified.

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